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SFTR: EU Commission adopts Delegated Regulations

The EU Commission has adopted Delegated Regulations regarding trade repositories under the Securities Financing Transactions Regulation (SFTR).

The Delegated Regulations adopted:

- amend Delegated Regulation (EU) 150/2013 as regards regulatory technical standards (RTS) specifying the details of the application for registration as a trade repository (TR);
- supplement the SFTR with regard to RTS specifying the details of the application for registration and extension of registration as a TR; and
- amend Delegated Regulation (EU) 151/2013 with regard to access to the data held in TRs.

The EU Commission has also adopted a Delegated Regulation with regard to RTS on access to details of securities financing transactions (STFs) held in TRs.

The Delegated Acts will now pass to the EU Council and the Parliament for scrutiny and will enter into force on the twentieth day following that of their publication in the Official Journal.

Non-performing loans: ECON Committee adopts report on proposed regulation on minimum loss coverage

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has adopted its report on the Commission's proposal for a regulation amending the Capital Requirements Regulation (CRR) as regards minimum loss coverage for non-performing exposures.

Key amendments contained in the Committee's report include the introduction of a uniform calendar to apply from the date on which the non-performing loan (NPL) is classified as non-performing, rather than the date of purchase, and that the prudential backstop apply on an exposure-by-exposure level. The amendments also specify that the new rules will not apply to exposures originated prior to the date of the entry into force of the regulation.

MiFIR: EU Commission adopts amendment to RTS 1 transparency requirements

The EU Commission has adopted a Delegated Regulation amending and correcting regulatory technical standards under MiFIR on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments (Delegated Regulation (EU) 2017/587 – RTS 1).

The adopted delegated regulation is intended to further specify the notion of 'prices reflecting prevailing market conditions' in Article 10 of RTS 1 and also remove the reference to securities financing transactions in Articles 2 and 6 of RTS 1.

The regulation introduces minimum share price variation ('tick size increments') when investment firms quote prices in shares and other equity-like instruments, which will be the smallest increment permitted in quoting or trading a security. The amended rules form part of the EU Commission's broader policy to ensure a level playing field between systematic internalisers and trading venues.

The Delegated Regulation will enter into force on the twentieth day after its publication in the Official Journal.

MiFID2: EU Commission adopts Delegated Regulation on SME growth market requirements

The EU Commission has adopted a Delegated Regulation on certain registration conditions to promote the use of small and medium-sized enterprise (SME) growth markets for the purposes of MiFID2.

The Delegated Regulation amends Delegated Regulation (EU) 2017/565 in order to:

- introduce a less restrictive definition of non-equity SME issuer based on issuance size, whereby a non-equity issuer will be deemed to be an SME if the nominal value of its debt issuances over the previous calendar year does not exceed EUR 50 million;
- allow SME growth market operators to exempt non-equity issuers from the requirement to publish half yearly financial reports; and
- introduce a new free float requirement as a condition for admission to trading for the first time, in accordance with a threshold to be set by the SME growth market operator expressed as either an absolute value or as a percentage of the total issued share capital.

The Regulation will enter into force on the day following its publication in the Official Journal and start to apply three months later.

MiFID2: ESMA publishes final report on amendments to tick size regime

The European Securities and Markets Authority (ESMA) has published its final report on amendments to the tick size regime under Commission Delegated Regulation (EU) 2017/588 (RTS 11).

The proposed amendments to RTS 11 will allow National Competent Authorities (NCAs) of EU trading venues where third-country shares are traded to decide on an adjusted average daily number of transactions (ADNT) on a case-by-case basis, in order to take into account the liquidity available on third country venues in the calibration of tick sizes.

Under RTS 11, the minimum tick size applicable to shares and depositary receipts is calibrated to the ADNT on the most liquid market in the EU. ESMA notes that since the implementation of MiFID2, experience has shown that this metric may not be suited to instruments where the most liquid venue is located outside the EU. In those cases, the mandatory tick size may be calculated only based on a small subset of the global trading activity and, as a result, EU trading venues may be subject to minimum tick sizes that are larger than those applicable on non-EU venues. According to ESMA, this may unintentionally put EU venues at a competitive disadvantage and may result in shallower liquidity on EU trading venues which could be detrimental to the interests of investors trading on EU venues and for orderly trading on EU markets.

ESMA has submitted its final report to the EU Commission, which now has three months to decide whether to endorse the proposed amendments to RTS 11.

PSD2: EBA publishes opinion on use of eIDAS certificates

The European Banking Authority (EBA) has published an opinion on the use of eIDAS certificates under the RTS on strong customer authentication and secure communication under the recast Payment Services Directive (PSD2).

The opinion, which is intended to address questions and concerns raised by market participants:

- specifies that account servicing payment service providers (PSPs) are responsible for choosing whether to use a qualified certificate for electronic seals (QSealC) or for website authentication (QWAC) for identification purposes;
- highlights three potential alternative approaches for the use of eIDAS certificates, which the EBA recommends should be used in parallel with QSealCs and QWACs;
- sets out which payment services correspond to each of the roles specified in Article 34(3)(a) of the RTS and which roles should be assigned in the certificates to payment institutions, electronic money institutions and credit institutions; and
- identifies measures that competent authorities may apply to ensure all PSPs are able to rely on the eIDAS certificates (although the EBA acknowledges that the validity of the information in the certificates is the responsibility of the PSPs and those providers that issue them).

Securitisation Regulation: EBA publishes final guidelines on interpreting STS criteria

The EBA has published its final guidelines providing a harmonised and consistent interpretation of the simple, transparent and standardised (STS) criteria.

The guidelines, which will apply on a cross-sectoral basis throughout the EU, are focused primarily on non-asset-backed commercial paper (ABCP) and on ABCP securitisation.

Among other aspects, the guidelines are intended to ensure a common understanding of all STS criteria in relation to:

- the expertise of the originator and servicer;
- the underwriting of standards;
- exposures in default and credit impaired debtors; and
- predominant reliance on the sale of assets.

The guidelines will apply from 15 May 2019, but the EBA expects competent authorities to follow this approach as of the application date of the EU securitisation framework on 1 January 2019.

EBA consults on ICT and security risk management guidelines

The EBA has launched a consultation on its draft guidelines on information and communication technology (ICT) and security risk management.

The EBA notes that the complexity of ICT risks is increasing and the frequency of ICT-related incidents, including cyber incidents, is rising together with their potential significant adverse impact on financial institutions' operational functioning. Moreover, due to the interconnectedness between financial institutions, ICT-related incidents risk causing potential systemic impact.

The draft guidelines set out how financial institutions should manage the ICT risks they are exposed to. They establish requirements for credit institutions, investment firms and payment service providers (PSPs) on the mitigation and management of their ICT risks and aim to ensure a consistent and robust approach across the Single Market.

The draft guidelines are addressed to credit institutions and investment firms as defined in the Capital Requirements Directive (CRD 4) for all of their activities, and to PSPs subject to the revised Payment Services Directive (PSD2), for their payment services.

Comments are due by 13 March 2019.

Basel Committee updates Pillar 3 disclosure requirements

The Basel Committee on Banking Supervision has published updated Pillar 3 disclosure requirements, marking completion of the Pillar 3 framework.

In respect of the Basel III post-crisis regulatory reforms, the updated framework covers:

- revised disclosure requirements for credit risk, operational risk, leverage ratio, credit valuation adjustment (CVA);
- new disclosure requirements to compare modelled and standardised risk-weighted assets (RWA); and
- revised overview templates on risk management, key prudential metrics and RWA.

The updated framework also introduces:

- new disclosure requirements on encumbered and unencumbered assets; and
- new disclosure requirements on capital distribution constraints.

The implementation deadline for the disclosure requirements relating to Basel III is 1 January 2022. The implementation deadline for the disclosure requirements for asset encumbrance, capital distribution constraints and the prudential treatment of problem assets has been extended by one year to end-2020.

Basel Committee consults on revisions to leverage ratio disclosure requirements

The Basel Committee on Banking Supervision has launched a consultation on potential revisions to the disclosure requirements for the leverage ratio.

The Basel III leverage ratio standard comprises a three per cent minimum level that banks must meet at all times, a buffer for global systemically important banks and a set of public disclosure requirements.

Heightened volatility in segments of money markets and derivatives markets around key reference dates, such as quarter-end dates, has alerted the Committee to potential regulatory arbitrage by banks.

The consultation changes address ‘window dressing’ in the form of temporary reductions of transaction volumes in key financial markets around reference dates resulting in the reporting and public disclosure of elevated leverage ratios. The Committee proposes that banks be required to include in their Pillar 3 disclosures the amounts of each of the following exposures calculated based on an average of daily values over the quarter:

- adjusted gross securities financing transaction (SFT) assets recognised for accounting purposes;
- replacement cost of derivative exposures; and
- central bank reserves that are included in on-balance sheet exposures.

The Committee proposes that the potential revisions to Pillar 3 disclosure requirements set out in the consultation be implemented by 1 January 2022 and apply to all internationally active banks.

The Committee will continue its monitoring of trends in banks’ leverage ratio exposures and may consider extending the scope of disclosure requirements based on averages if warranted to address potential window-dressing behaviours identified for other sorts of exposures.

Comments are due by 13 March 2019.

PRA updates statement of policy on systemic risk buffer

The Prudential Regulation Authority (PRA) has published an updated final Statement of Policy (SoP) on its approach to the implementation of the systemic risk buffer (SRB). The amendments to the SoP were published for consultation in CP29/18 but the PRA received no responses and has therefore published the final version without any changes to the version consulted upon.

The amendments include:

- removing the statement that the PRA's approach to reviewing the SoP every two years is mandated by the SRB regulations;
- replacing references to CP25/16 with the corresponding PRA SoP on its methodologies for setting Pillar 2 capital following publication of the final policy; and
- references to supervisory statement 'The UK leverage ratio framework' (SS45/15), which was recently updated regarding the application of an additional leverage ratio buffer rate to SRB institutions.

FCA consults on changes to facilitate investment in patient capital

The Financial Conduct Authority (FCA) has launched a consultation on proposed rule changes intended to enable retail investors to invest in patient capital through unit-linked funds. The FCA has also published a discussion paper exploring how UK authorised funds can be used to invest in patient capital.

Patient capital refers to a broadly defined range of illiquid investments, such as venture capital, infrastructure and corporate loans, intended to deliver long-term returns. These different elements of patient capital may have significantly different or higher risk profiles and this may in turn affect their suitability for retail investors.

CP18/40 proposes changes to the FCA's Conduct of Business (COBS) sourcebook that are intended to address any unjustified barriers its permitted links rules may present to investment by retail investors in patient capital while still offering an appropriate degree of investor protection.

DP18/10 explores the impact of the regulatory regime on patient capital assets through authorised funds, and seeks views on whether the regime provides investors and fund managers with appropriate access to patient capital investment while maintaining the right level of consumer protection. In particular, the discussion paper asks if the current limits on investments in patient capital for some types of fund are appropriate and if there is demand for a new type of authorised retail fund which can invest all its capital directly into patient capital assets.

Comments on the consultation and discussion paper are due by 28 February 2019.

Brexit: SIs under the EU (Withdrawal) Act for 10 – 14 December 2018

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week.

For guidance purposes, HM Treasury (HMT) has published:

- the draft Financial Services (Distance Marketing) (Amendment and Savings Provision) (EU Exit) Regulations 2019;
- the draft Mortgage Credit (Amendment) (EU Exit) Regulations 2019; and
- the draft Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019.

The draft instruments are still in development and the guidance is intended to provide Parliament and stakeholders with further details on HM Treasury's approach to onshoring financial services legislation.

The Ministry of Justice (MoJ) has laid the draft Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018 for sifting. The instrument is intended to ensure that the rules under the Rome I Regulation (593/2008) and Rome II Regulation (864/2007) for determining applicable law for contractual and non-contractual obligations continue to operate effectively in domestic law after Brexit. SIs going through the sifting process are considered by a committee in the House of Commons and the House of Lords, which determine the suitability of the 'negative procedure'. The sifting end date for this instrument is 9 January 2019.

The draft Credit Rating Agencies (Amendments etc) (EU Exit) Regulations 2019 and draft Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019, which propose amendments to the retained EU law Settlement Finality Directive (98/26/EC - SFD) and Financial Collateral Arrangements Directive (2002/47/EC), have been laid before Parliament.

The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (SI 2018/1329) have been made. This instrument makes certain amendments relating to the EU Services Directive (2006/123/EC) and amendments to the UK's insolvency regime in relation insolvency practitioners' requirements for holding professional liability insurance.

For information on all draft SIs under the EU (Withdrawal) Act published last week, visit www.gov.uk and www.legislation.gov.uk.

Brexit: Draft law allowing French government to adopt measures by way of ordinance to prepare for no deal Brexit adopted by Assemblée Nationale

A draft law allowing the French government to adopt measures by way of ordinance to prepare for a no deal Brexit has been adopted by the French Assemblée Nationale. The draft law, which is subject to an accelerated legislative procedure, is now being examined by the joint committee (Commission Mixte Paritaire), which is the last step prior to the law being enacted.

The draft law is intended to empower the government to act by way of ordinances with respect to various matters, such as residence and employment in France of British nationals, applicability to British nationals residing in France of social benefit schemes, transportation of passengers and goods, continuity of regulated activities carried out by UK individuals and legal entities, etc.

Specifically in the banking and financial field, the French government will be authorised to adopt by way of ordinance any measure required to, among other things, allow access of French entities to interbank and settlement systems of third countries (including the UK post-Brexit, which is expressly mentioned as a third country), ensure the finality of payments made through such third country systems and the continuity of master agreements in financial services, secure the performance of contracts which have been entered into prior to the loss by the UK of mutual recognition rights, designate the relevant authority for supervising activities related to securitisation, and introduce specific rules for the management of collective investment schemes which are subject to investment ratios in European entities.

Once such ordinances are issued by the French government, and within six months from their publication, a ratification bill would have to be tabled in the French Parliament.

AMF and CSRC sign joint letter of cooperation

During the recent 6th China-France High-level Economic and Financial Dialogue held in Paris on 7 December 2018, the Autorité des marchés financiers (AMF) and the China Securities Regulatory Commission (CSRC) signed a Joint Letter of Cooperation to advance regulatory collaboration between the two authorities and to deepen substantial cooperation in the capital markets of the two countries, in order to make positive contributions to constructing a close and durable Sino-French comprehensive economic strategic partnership.

Against the backdrop of the current international economic and financial situation, the signing of the letter is intended to reaffirm the two authorities' commitment to deepening substantial cooperation in such areas as preventing risks and ensuring market integrity, financing the real economy, as well as bilateral cooperation on asset management, green and sustainable finance, and financial innovation. With a two-year cooperation implementation program developed to achieve the above objectives, the letter is designed to complement the bilateral Memorandum of Understanding Regarding Securities and Futures Regulatory Cooperation signed between the two authorities in 1998.

BaFin publishes interpretation guidelines on German Anti-Money Laundering Act

The German Federal Financial Supervisory Authority (BaFin) has published an interpretation of the German Anti-Money Laundering Act (Geldwäschegesetz). The guidelines apply to all obliged entities which are subject to BaFin's supervision.

The guidelines are intended to enable the correct implementation of customer due diligence and internal safeguards and pursue a risk-based approach. In particular, legislative updates such as the concept of a fictional beneficial owner (fiktiver wirtschaftlicher Berechtigter) and the obligations in connection with the identification of the acting persons (auftretenden Person) are further clarified.

Bank of Italy implements EBA guidelines on product oversight and governance arrangements for retail banking products

The Bank of Italy has amended its Regulation of 29 July 2009 on transparency of transactions and banking and financial services, and fairness of relations between intermediaries and customers, implementing the EBA guidelines on product oversight and governance arrangements for retail banking products dated 22 March 2016 (EBA/GL/2015/18).

As clarified by the EBA, the guidelines are intended to deal with the establishment of product oversight and governance arrangements for both manufacturers and distributors as an integral part of the general organisational requirements linked to the internal control systems of firms. In particular, they refer to internal processes, functions and strategies for designing products, bringing them to the market, and reviewing them over their life cycle.

The new provisions will apply from 1 January 2019 (with limited exceptions for certain specific institutions).

Dutch bank creditor hierarchy legislative proposal enters into force

As announced by the Dutch government on 13 December, the law implementing Directive 2014/59/EU, which amends Article 108 of the Bank Recovery and Resolution Directive (BRRD), has entered into force.

The implementation law introduces a layer of senior non-preferred (SNP) unsubordinated debt into Dutch law that ranks above subordinated debt but below other senior unsubordinated liabilities in insolvency. As such, the additional layer of SNP debt gives banks a statutory option to comply with the subordination requirement under global total loss-absorbing capacity (TLAC) standards and the EU's minimum requirement for own funds and eligible liabilities (MREL).

Dutch Ministry of Finance consults on implementation of 5AMLD

The Dutch Ministry of Finance has published a consultation version of the Implementation Act for the Amendment of the Fourth Anti-Money Laundering Directive (Implementatiewet wijziging vierde anti-witwasrichtlijn).

This proposal is intended to transpose the fifth EU Anti-Money Laundering Directive (EU) 2018/843 (5AMLD) in the Netherlands. The deadline for implementation of 5AMLD is 20 January 2020. Under the 5AMLD, virtual currency brokers/wallet providers will become subject to anti-money laundering legislation, including the Dutch Money Laundering and Terrorist Financing (Prevention) Act (Wet ter voorkoming van witwassen en financieren van terrorisme) (AML Act).

The proposal will also subject virtual currency brokers/wallet providers based in the Netherlands to a new licence regime. It will be prohibited to offer cryptocurrency brokerage/wallet services in or from the Netherlands without either:

- a licence from the Dutch Central Bank; or

- a comparable licence in another EU Member State on which supervision is exercised that provides sufficient safeguards in respect of the interests protected by the Dutch AML Act, unless an exemption applies.

The licence application process entails that DNB will test whether the relevant entity will be able to comply with all AML Act requirements and whether its daily policy makers (directors/senior management) have sufficient expertise and are trustworthy.

Market parties may comment on the consultation until 15 January 2019.

Ministry of Digitisation and Warsaw Stock Exchange enter into agreement on use of blockchain technology

The Ministry of Digitisation and the Warsaw Stock Exchange have entered into an agreement to cooperate in the application of blockchain technology in the public sphere. The aim of the agreement is to increase the use of blockchain technology on capital markets and then implement similar solutions where they can improve the efficiency, effectiveness and productivity of processes in the economy and in administration.

SFC issues circular on clearing amendment rules

The Hong Kong Government has gazetted the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018 (Clearing Amendment Rules).

The Clearing Amendment Rules are intended to amend the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Clearing Rules) to add eight new 'calculation periods', and their corresponding clearing thresholds and 'prescribed days'. The first new calculation period will be from 1 March 2019 to 31 May 2019. Subject to negative vetting by the Legislative Council, the Clearing Amendment Rules will be effective on 1 March 2019.

Additionally, the SFC has issued a circular to remind licensed persons that if their average total position in OTC derivatives during a calculation period reaches the corresponding clearing threshold, relevant OTC derivative transactions they enter into on and after the corresponding prescribed day must be centrally cleared in accordance with the Clearing Rules.

SFC concludes consultation on OTC derivatives and conduct risks

The Securities and Futures Commission (SFC) has concluded its December 2017 public consultation on proposals to enhance the over-the-counter (OTC) derivatives regime, and address conduct risks posed by dealings with group affiliates and other connected persons.

The consultation conclusions only cover the proposed requirements under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission. The SFC has indicated that the consultation conclusions on amendments to the Securities and Futures Ordinance and subsidiary legislation with respect to the new Types 11 and 12 regulated activities will be published separately.

Under the proposals, which the SFC will implement, licensed corporations that are contracting parties to non-centrally cleared OTC derivative transactions or are licensed for Type 9 (asset management) regulated activity will be subject to risk mitigation requirements. Licensed corporations providing client clearing services for OTC derivative transactions will be subject to segregation, portability and disclosure requirements.

In addition, licensed corporations which have dealings with group affiliates and other connected persons will be subject to conduct requirements to ensure that risks are properly managed, they act in clients' best interest and appropriate risk disclosure is provided.

The amendments to the Code of Conduct will be gazetted on 14 December 2018. The risk mitigation requirements will become effective on 1 September 2019, while the client clearing requirements will become effective when the new Types 11 and 12 regulated activities take effect. The conduct requirements to address risks posed by group affiliates and other connected persons will become effective six months after the gazettal of the Code of Conduct amendments.

National Assembly passes Financial Innovation Support Act

The Financial Services Commission (FSC) has announced that the National Assembly has passed the Financial Innovation Support Act. The Act, which will take effect in March 2019, is intended to introduce a regulatory sandbox for innovative financial services, where fintech firms will be able to test their new services with regulatory exemptions for a certain period of time.

Amongst other things, under the new legislation:

- fintech firms or financial institutions may apply for participation in the regulatory sandbox with financial services acknowledged as differentiated from existing services in their content, method and form;
- a review committee will be established under the FSC with financial officials and experts in technology, finance, laws and consumer rights to review applications and designate an 'innovative service' provider;
- designated service providers will be allowed to test their new services for a maximum of two years in an environment where certain regulations will be exempted. If there is a concern about irreversible damage to consumers or undermining financial stability, regulatory exemptions will not be allowed; and
- those who apply for a designation as an innovative financial service provider will be required to submit their plans for consumer protection and risk management. Only those who have sufficient measures to protect consumers will be accepted to the regulatory sandbox.

MAS consults on proposed revisions to exemption framework for cross-border business arrangements of capital markets intermediaries

The Monetary Authority of Singapore (MAS) has launched a public consultation on its proposed revisions to the exemption framework for cross-border business arrangements between financial institutions in Singapore and their foreign related corporations (the FRC Framework). Implemented in 2002, the FRC Framework facilitates arrangements to allow FRCs to provide cross-border financial services to customers in Singapore, without subjecting these FRCs to licensing requirements.

Currently, financial institutions that wish to enter into such arrangements apply to the MAS for approval on a case-by-case basis. The MAS proposes to streamline the FRC Framework by moving from the current ex-ante approval approach to an ex-post notification approach. Under the proposed framework, regulated entities and their FRCs may commence the conduct of regulated activities under these business arrangements so long as they comply with a set of boundary conditions.

To enable the MAS to monitor and address the risks that may arise from such business arrangements under the proposed ex-post notification approach, the MAS will require financial institutions to submit relevant attestation and information on a periodic basis.

In this connection, the MAS is seeking comments on, amongst other things:

- the proposed inclusion of Exempt Brokers (over-the-counter derivatives brokers and futures brokers that are exempted from license requirements) in the scope of the FRC Framework;
- the proposed exclusion of arrangements involving issuing or promulgating research reports from the scope of the FRC Framework;
- the proposed exclusion of managers of venture capital funds from the scope of the FRC Framework; and
- the notification requirements, boundary conditions and ongoing reporting requirements for the proposed FRC Framework.

The consultation closes on 31 January 2019.

MAS publishes updated guide to digital token offerings

The MAS has published a revised version of its guide to digital token offerings. The guide was originally published in November 2017 and provides general guidance on the application of the Securities and Futures Act (SFA) and Financial Advisers Act (FAA) to offers or issues of digital tokens in Singapore.

Amongst other things, the revisions to the guide:

- effect consequential changes stemming from the amendments to the SFA pursuant to the Securities and Futures (Amendment) Act 2017;
- effect consequential changes to address the introduction of the Payment Services Bill (PSB) in Parliament, under which a person carrying on a business of providing any service of dealing in digital payment tokens or any service of facilitating the exchange of digital payment tokens must be licensed and regulated under the PSB;
- emphasise that the MAS Notice on Prevention of Money Laundering and Countering the Financing of Terrorism will apply to intermediaries who facilitate offers or issues of digital tokens;
- include further case studies illustrating how the SFA, FAA and PSB may apply to offers or issues of digital tokens; and
- set out the MAS' views on members of the public contacting the MAS in relation to enquiries on digital token offerings, and the manner in which such enquiries may be made.

MAS announces launch of new SGD 30 million grant to enhance cybersecurity capabilities in financial sector

The MAS has announced the introduction of a new SGD 30 million Cybersecurity Capabilities Grant to strengthen the financial sector's resilience to cyber threats and help financial institutions (FIs) develop local talent in cybersecurity.

The grant, which will be funded under the Financial Sector Technology and Innovation Scheme, will co-fund up to 50% of certain qualifying expenses, capped at SGD 3 million, for FIs:

- to establish their global or regional cybersecurity centres of excellence in Singapore; and
- with key financial or regional cybersecurity functions and operations in Singapore to expand and deepen their cybersecurity capabilities locally.

The grant is also intended to encourage Singapore-based FIs to upskill their local workforce through cybersecurity-related training programmes.

Applications for the grant are now open for FIs and those interested should write to the MAS for more information.

Anti-Money Laundering and Countering the Financing of Terrorism Industry Partnership launches paper to encourage greater adoption of data analytics solutions by financial institutions

The MAS has announced that the Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) Industry Partnership (ACIP) has launched a paper entitled 'Industry Perspectives – Adopting Data Analytics (DA) Methods for AML/CFT'.

ACIP was set up in April 2017. It is co-chaired by the MAS and the Commercial Affairs Department (CAD), and is supported by a steering group comprising 8 banks and the Association of Banks of Singapore. ACIP brings together both stakeholders from industry and government and provides a dedicated platform to discuss key transnational illicit finance risks confronting Singapore's financial and non-financial sectors as well as identify and promote areas to uplift ML/TF risk understanding in Singapore.

The paper brings together the experiences of major banks in using DA techniques to combat financial crime. Amongst other things, the paper:

- provides an understanding of the current state of DA deployment in the area of AML/CFT, by sharing well-established use cases as well as more experimental work;
- provides examples of effectiveness improvements, such as the 40% reduction in false positives and 5% increase in true positives delivered by one bank's proof-of-concept conducted on a machine learning solution for transaction monitoring;
- provides practical suggestions, drawn from the experiences of major banks, to address key governance and implementation issues. These include considerations on the validation, audit and explainability of DA models to gain assurance that the models built can reliably improve the detection of illicit activities; and

- highlights areas in AML/CFT analytics where closer industry and private-public cooperation could yield benefits. These include working with the Institute for Banking and Finance (IBF) on dedicated career paths and skills development for AML/CFT analytics professionals, as well as workshops for financial institutions, the MAS and the CAD to collectively address key policy and operational issues in AML/CFT analytics such as model governance and using DA to target high-risk areas.

US Alternative Reference Rates Committee consults on Libor fallback contract language for bilateral business loans and securitizations

The US Alternative Reference Rates Committee (ARRC) has launched consultations on USD LIBOR fallback contract language for bilateral business loans and securitizations.

The consultations outline draft language for new contracts that reference LIBOR with the aim of ensuring that these contracts will continue to be effective in the event that LIBOR is no longer usable.

The consultation on bilateral business loans proposes two approaches:

- a hardwired approach, offering a clear waterfall for selecting a replacement benchmark and spread adjustment that would apply if LIBOR is no longer usable; and
- an amendment approach, providing a streamlined amendment mechanism that provides flexibility in negotiating a replacement benchmark and spread adjustment.

The bilateral business loans consultation also seeks feedback on the relationship between loans that implement a replacement benchmark and related hedging arrangements that borrowers and lenders use to mitigate risks.

The consultation on securitizations proposes one specific hardwired approach regarding triggering events and the waterfall for rate determination. It also considers the challenges presented by the securitization market's asset and liability components.

Comments on both consultations are due by 5 February 2019.

The ARRC has also published the comments received on its first set of consultations launched in September 2018 on fallback language for floating rate notes and syndicated business loans. After full review of this market feedback, the ARRC intends to release final recommendations on fallback language in these contracts for market participants' voluntary use in early 2019.

ASIC advises financial advisers on changes to professional standards requirements

The Australian Securities and Investments Commission (ASIC) has announced that the new professional standards requirements for financial advisers will, with effect from 1 January 2019, progressively replace training standards in 'Regulatory Guide 146 Licensing: Training of financial product advisers' (RG 146).

The professional standards reforms were introduced in March 2017 to raise the education, training and ethical standards of financial advisers providing personal advice to retail clients on more complex financial products. Under the new requirements, all relevant providers must, amongst other things:

- have a relevant bachelor or higher degree, or equivalent qualification;
- meet continuing professional development requirements each year;
- complete a year of work and training (professional year) – although this will not apply for individuals who are already relevant providers before 1 January 2019; and
- comply with a code of ethics and be covered by a compliance scheme that monitors and enforces compliance with the code of ethics.

ASIC has clarified that the RG 146 will continue to apply to financial advisers who are authorised by their Australian financial services (AFS) licensee as an 'existing provider' until the new requirements apply to them. RG 146 will also continue to apply to advisers who are not 'relevant providers', but it will not be applicable to new entrants to the industry seeking to become a relevant provider from 1 January 2019 onwards. Further, ASIC has indicated that it will review and update its guidance for advisers who are not relevant providers.

ASIC notes that there are inconsistencies between the licence conditions and the new training requirements in the professional standards reforms. In this connection, ASIC has issued a 'no-action position' for AFS licensees who are affected by the changes.

RECENT CLIFFORD CHANCE BRIEFINGS

Cryptoasset enforcement – Where are we at the end of 2018? What to expect in 2019?

On 11 December 2018, Andrew Bailey, Chief Executive of the UK Financial Conduct Authority (FCA), speaking to an audience in London, praised the enforcement action taken by the Securities and Exchange Commission (SEC) in relation to initial coin offerings (ICOs) and said that European regulators could learn from the SEC's strong interventions. The FCA is expected to consult on the regulation of cryptoassets early in 2019 but has not yet taken any enforcement action.

This briefing shares data obtained from the FCA by freedom of information request relating to current cryptoasset investigations and analyses enforcement trends globally.

https://www.cliffordchance.com/briefings/2018/12/cryptoasset_enforcementwhereareweattheen.html

Brexit: European Court of Justice confirms Article 50 can be unilaterally revoked

The Court of Justice has confirmed the opinion of Advocate General Manuel Campos Sánchez-Bordona and ruled that the UK can unilaterally revoke Article 50, without requiring the approval of the other Member States. The UK's EU membership would then continue under the same terms and conditions as before.

This briefing discusses the judgment.

https://www.cliffordchance.com/briefings/2018/12/brexit_update_europeancourtofjusticeconfirm.html

Germany prepares for 'No deal Brexit'

The German Federal Government has published a draft law to preserve market access for UK firms offering banking business or financial services in Germany under the European passport regime for a transitional period in case of a 'no deal Brexit'. The government draft law is based on the draft prepared by the German Ministry of Finance in November (see our Brexit briefing of 23 November 2018). The draft law includes certain additions and useful clarifications on the scope of this transitional regime.

This briefing discusses the draft law.

https://www.cliffordchance.com/briefings/2018/12/germany_preparesfornodealbrexitupdate.html

The Netherlands commercial court – a new court for international commercial disputes

On Tuesday 11 December 2018 the Dutch Senate approved the bill to establish a commercial court in the Netherlands: the Netherlands Commercial Court (NCC). The relevant legislation will enter into force soon. Parties may therefore shortly bring international commercial disputes before the NCC.

Proceedings before the NCC are conducted in the English language and judgments are given in the English language as well. A judgment from the NCC is automatically enforceable in all EU Member States but may also be enforceable outside of the EU – i.e. depending on the applicable international conventions or local recognition and enforcement rules. These features make the NCC an interesting new alternative to international commercial dispute resolution.

This briefing discusses the new court.

https://www.cliffordchance.com/briefings/2018/12/the_netherlands_commercialcourtanewcourtfo.html

US Court Affirms Economic Realism and Rejects CFTC Bid to Expand the Offense of Price Manipulation

In a sharply worded decision released last week, a New York federal court provided some much-needed clarity for commodities and derivatives market participants by making clear that the US Commodity Futures Trading Commission (CFTC) must show that a trader intends to create an artificial price in order to be guilty of attempting to manipulate or manipulating a commodity price and that an intent to merely influence the price is insufficient.

The Court's decision, dismissing all of the CFTC's price manipulation related charges against DRW Investments, LLC and its CEO, has dealt the CFTC a serious blow in its attempt to expand the definition of what constitutes unlawful price manipulation. The decision is based on certain findings that likely have broad application for large traders whose market conduct influences price in centralized or bilateral commodities and derivatives markets.

This briefing discusses the judgment.

https://www.cliffordchance.com/briefings/2018/12/u_s_court_affirmseconomicrealismandreject.html

FinCEN and Federal Banking Agencies Issue Joint Statement Encouraging FinTech Sandboxes for AML Compliance

On 3 December 2018, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network (FinCEN), the National Credit Union Administration, and the Office of the Comptroller of the Currency issued a joint statement encouraging banks and financial institutions to utilize innovative technology-enabled approaches to meet their Bank Secrecy Act/anti-money laundering (AML) compliance obligations.

This briefing discusses the statement.

https://www.cliffordchance.com/briefings/2018/12/fincen_and_federalbankingagenciesissuejoin.html

The Fourth Mexican Transformation

Mexico is undergoing significant political change with the election of left-winger, Andrés Manuel López Obrador (AMLO), as President. AMLO took office on 1 December 2018 and has committed to bring about the 'fourth Mexican transformation' (the first three were the independence in 1810, the reformation in 1855 and the revolution in 1910), which he says will induce change 'as profound' as the one brought by the revolution but without violence.

This briefing discusses the outlook for the government.

https://www.cliffordchance.com/briefings/2018/12/the_fourth_mexicantransformation.html

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